

## REMARKS

Applicants confirm the election of Group II, claims 13-28, for prosecution.

Claims 1-12, 22, and 29-57 have been cancelled.

Non-elected claims 1-12 and 29-57 have been canceled to pursue them in divisional applications that were filed prior to this Response to Office Action, and not for any reason relating to patentability.

New claims 58-87 have been added. Independent claim 58 is a combination of the original claim 13 with the limitations of claim 23, which had been objected to as being dependent upon a rejected base claim, but that would be allowable if rewritten in independent form. Independent claim 66 is a combination of the original claim 13 with the limitations of claim 24, which had been objected to as being dependent upon a rejected base claim, but that would be allowable if rewritten in independent form. Independent claim 74 is a combination of the original claim 13 with the limitations of claim 25, which had been objected to as being dependent upon a rejected base claim, but that would be allowable if rewritten in independent form. Independent claim 81 is a combination of the original claim 13 with the limitations of claim 27, which had been objected to as being dependent upon a rejected base claim, but that would be allowable if rewritten in independent form. Thus, these independent claims and the claims that depend from them are believed to be in condition for allowance.

## 35 U.S.C. §112

Claim 13 has been amended to clarify that the graft vessel has a lumen. The graft vessel is a workpiece and is not claimed positively in any pending claim. Indeed, the graft vessel is human tissue, and as such cannot be claimed positively. The amendment to claim 13 provides antecedent basis for the statement in claim 14 that the workpiece graft vessel has a lumen. Claims 13 and 14 are believed to be in condition for allowance.

## 35 U.S.C. §102

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (emphasis added).

### Claims 13-28

Claim 13 has been amended to include the limitations of claim 22, which had been objected to as being dependent upon a rejected base claim, but that would be allowable if rewritten in independent form, and is therefore believed to be in condition for allowance. Claims 14-21 and 23-28 depend directly or indirectly from claim 13, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

With regard to U.S. Patent No. 5,695,504 to Gifford III et. al. (“Gifford”), Gifford neither discloses nor suggests each and every element claimed in the original claim 13, much less amended claim 13.

First, Gifford does not disclose a mechanism configured to create an opening in the target vessel. The anvil 136 of Gifford is inserted through a pre-existing opening in the target vessel. (e.g., Gifford, col. 7, lines 5-9; col. 18, lines 60-67; Figures 4, 5A). The vessel punch mechanism 120 merely enlarges that pre-existing opening; it does not create an opening.

Second, even if the vessel punch mechanism 120 were a mechanism configured to create an opening in the target vessel, which Applicants do not admit, Gifford does not disclose “a single control configured to operate both said first mechanism and said second mechanism.” Instead, Gifford discloses “pressing on the actuating plunger 142 at the proximal end of the drive member 132” to operate the vessel punch mechanism 120, and “rotating the handle 126 of the outer tube 125 with respect to the T-handle 133 of the vessel

punch mechanism 120" to connect the attachment legs 105 of part of an anastomosis device to the target vessel. (e.g., Gifford; col. 19, lines 10-20; Figures 5A-5F) (emphasis added). Thus, Gifford discloses two separate controls (a plunger 142 and a handle 126) rather than a single control configured to operate "a first mechanism configured to create an opening in the target vessel and a second mechanism configured to complete an anastomosis with the target vessel." Indeed, the two controls of Gifford are actuated in two different ways: pressing and rotating.

Third, Gifford does not disclose an integrated anastomosis tool. The anastomosis is not complete until the graft vessel insertion tool 121 is inserted into the stapling mechanism 119, thereby connecting the coupling member 102 to the anchor member 101 to complete the anastomosis with the two-piece anastomosis device 100. (e.g., Gifford; col. 13, lines 24-26; col. 19, lines 28-58; Figures 5E-5G). Thus, Gifford discloses that two separate and discrete tools are required to complete the anastomosis – the stapling mechanism 119 and the graft vessel insertion tool 121—rather than a single integrated anastomosis tool. Indeed, because Gifford utilizes two separate tools to complete the anastomosis, a single control cannot be used to operate both of those tools.

#### REQUEST FOR ALLOWANCE

Allowance of the pending claims is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,



Brian A. Schar  
Attorney for Applicants  
Reg. No. 45,076  
Tel. No. (650) 331-7162